

CV 11 0254

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSHUA B. KOENIG as Parent and Guardian of DAVID KOENIG
on behalf of himself and all others similarly situated

Plaintiff,

(S.F.)

-against-

MBI ASSOCIATES, INC.

Defendant.

CLASS ACTION COMPLAINT

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 18 2011 ★

LONG ISLAND OFFICE

VITALIANO, J.
J. ORENSTEIN, M

Introduction

1. Plaintiff seeks redress for the illegal practices of MBI Associates, Inc. concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA").

Parties

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a "consumer" as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that defendant sought to collect from plaintiff is a consumer debt, purportedly owed to LMC Physician Services PC for \$109.28.
4. Upon information and belief, MBI Associates, Inc. is a New York Corporation.
5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.
6. Defendant is a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

Jurisdiction and Venue

7. This Court has Federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district since the defendant transacts business in this district and the collection letter was sent into this district.

Allegations Particular to Joshua B. Koenig

9. On information and belief, on a date better known by defendant, defendant began attempting to collect an alleged consumer debt from the plaintiff.
10. On or about March 11, 2010 defendant sent the plaintiff a collection letter seeking to collect a debt allegedly incurred for personal purposes.
11. Said letter states in pertinent part as follows: “Unless we receive payment within ten (10) days of receiving this letter, your account will be reviewed to determine whether further collection proceedings are warranted.”
12. Said language threatens the possibility of legal action against the plaintiff.
13. Upon information and belief, there is nothing that could be reviewed to determine whether legal action will be commenced or not.
14. At the time of the letter in question, the defendant did not have authorization to review the account in order to bring legal action.
15. Upon information and belief, defendant does not cause suit to be brought on behalf of LMC Physician Services PC or any other creditor in the amount of \$109.38 or a similar amount.

16. Said language contains false threats and misrepresentations in violation of 15 U.S.C. § 1692e(5) and 1692e(10).

AS AND FOR A FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act brought by plaintiff on behalf of himself and the members of a class, as against the defendant.

17. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-16 as if set forth fully in this Cause of Action.
18. This cause of action is brought on behalf of plaintiff and the members of a class.
19. The Class consists of consumers who received the same form letter, as did the plaintiff.
20. The Class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent a collection letter (a) bearing the defendant's letterhead in substantially the same form as the letter sent to the plaintiff on or about March 11, 2010 sent within one year prior to the date of the within complaint; (b) the collection letter was sent to a consumer seeking payment of a personal debt; and (c) the collection letter was not returned by the postal service as undelivered (d) and that the letter contained violations of 15 U.S.C. §§ 1692e(5) and 1692e(10).
21. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:
- (A) Based on the fact that the collection letters that are at the heart of this litigation are mass-mailed form letters, the class is so numerous that joinder of all members is impracticable.

- (B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA by failing to include certain language.
- (C) The only individual issue is the identification of the consumers who received the letters, (*i.e.* the class members), a matter capable of ministerial determination from the records of defendant.
- (D) The claims of the plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
- (E) The plaintiff will fairly and adequately represent the class members' interests. The plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The plaintiff's interests are consistent with those of the members of the class.

22. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

23. If the facts are discovered to be appropriate, the plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

24. Collection letters, such as those sent by the defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

Violations of the Fair Debt Collection Practices Act

25. The defendant's actions violate the Fair Debt Collection Practices Act.

26. Because the defendant violated of the Fair Debt Collection Practices Act, the plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment in his favor and on behalf of the members of the class, and against the defendant and award damages as follows:

- (a) Statutory damages provided under the FDCPA, 15 U.S.C. 1692(k);
- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Cedarhurst, New York
January 13, 2011



Adam J. Fishbein, P.C. (AF-9508)

Attorney At Law

Attorney for the Plaintiff

483 Chestnut Street

Cedarhurst, New York 11516

Telephone (516) 791-4400

Facsimile (516) 791-4411

Plaintiff requests trial by jury on all issues so triable.



Adam J. Fishbein (AF-9508)

100 Merrick Rd, Suite 430W
Rockville Centre Ny 11570

Return Service Requested

March 11, 2010

PERSONAL & CONFIDENTIAL

Koenig Davidalexia 96381

2129 E 34th St Fl 1
Brooklyn, NY 11234-4902



MBI ASSOCIATES INC.

100 Merrick Rd, Suite 430W
Rockville Centre Ny 11570

516-678-9705 (800) 428-8109
Fax 516-678-8148

New York City Dept. of Consumer
Affairs License #0919488

ACCOUNT IDENTIFICATION

Re : Lmc Physician Services Pc
Account Number : 1242394
Balance Due : \$109.28

Dear Koenig Davidalexia,

We have previously written to you regarding the above balance due to our client Lmc Physician Services Pc. At this time we are affording you one last opportunity to pay the above balance.

If you contact this office within five (5) days of receiving this letter, our office may be able to offer you a discount on the above balance.

Unless we receive payment within ten (10) days of receiving this letter, your account will be reviewed to determine whether further collection proceedings are warranted

This balance may represent one or multiple dates of service.

Our office accepts Visa, MasterCard and American Express which you may pay over the phone or online at www.paymbi.com. There will be a \$5.00 processing fee for all credit cards or checks over the phone.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

M. Huhulea
MBI ASSOCIATES INC.

Page 1 of 2

-----Detach and Return with Payment-----

Enter the requested information in the spaces provided below:

ACCOUNT IDENTIFICATION

Re: Lmc Physician Services Pc
Account Number: 1242394
Reference Number: 96381
Balance Due: \$109.28

Amount Enclosed: _____

For credit card payment use back of form

MBI ASSOCIATES INC.
100 Merrick Rd Ste 430W
Rockville Centre, NY 11570-4806

